

December 1, 1999

D.T.E. 97-120-A

Petition of Western Massachusetts Electric Company pursuant to General Laws Chapter 164, §§ 76 and 94, and 220 C.M.R. §§ 1.00 et seq., for review of its electric industry restructuring proposal.

ORDER ON MOTIONS FOR RECONSIDERATION AND CLARIFICATION

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I. INTRODUCTION

On September 17, 1999, the Department issued its Order in the above-referenced proceeding. Western Massachusetts Electric Company, D.T.E. 97-120 (1999). On October 7, 1999, the Department received motions for reconsideration and/or clarification from: (1) the Attorney General, (2) Western Massachusetts Industrial Customers Group ("WMICG"), and (3) Temple Beth El and Kodimoh Synagogue ("Houses of Worship").⁽¹⁾ On October 15, 1999, Western Massachusetts Electric Company ("WMECo" or "Company") submitted a response to the motions.⁽²⁾ This order addresses the motions for reconsideration and/or clarification.

II. MOTIONS FOR RECONSIDERATION/CLARIFICATION

A. Standards of Review

1. Motion for Reconsideration

The Department's Procedural Rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

2. Motion for Clarification

Clarification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is so ambiguous as to leave doubt as to its meaning. Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas & Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

B. Motions for Reconsideration

1. The Attorney General

The Attorney General filed a motion for reconsideration and clarification. The Attorney General requests that the Department reconsider its decision on the: (1) allowed cost of equity, and (2) capital structure (Attorney General Motion at 4-6).

a. Return on Equity

The Attorney General claims that the Department erred by allowing the Company to earn the highest return on equity ("ROE") in the restructuring cases decided by the Department without considering the fact that, according to the Attorney General, mismanagement appears to be the cause of WMECo's financial troubles (id. at 5). In support of this contention, the Attorney General cites Commonwealth Electric Company, D.P.U. 89-114/90-331/91-80 at, 224-225 (1991) in which the Department stated that it set the company's carrying cost rate in that case at the low end of the range of reasonable rates as a result of questionable management performance (id. at 6).

In response, the Company states that this issue was fully discussed and analyzed by the Department (Company Response at 2). The Company contends that the Attorney General's motion for reconsideration on this issue is a result of dissatisfaction with the decision, and that the Attorney General has not met the standard for reconsideration (id. at 3). The Company states that the Attorney General does not contend that there are extraordinary circumstances or that there are previously unknown or undisclosed facts that would have a significant effect on the decision (id.). Further, the Company states that the Attorney General's claim of mistake is insufficient to warrant the relief requested (id.). The Company also states that the Department disallowed WMECo a return on Millstone units 2 and 3 for the significant periods of time that the units experienced extended outages (id.). The Company contends that D.P.U. 89-114/90-331/91-80 is fact-specific and does not stand for the proposition that the Department must set the rate of return at the low end of a range of reasonableness for mismanagement (id. at 4).

The Department finds that the Attorney General has not introduced extraordinary circumstances or previously unknown facts. The Attorney General's claim of mistake is a

reargument of a position previously stated on brief and decided by the Department. This issue does not meet the Department's standard of review for either reconsideration or clarification. Therefore, the Attorney General's motion for reconsideration on this issue is denied.

b. Capital Structure

The Attorney General contends that the Department's finding on the appropriateness of the 1995 year-end capital structure contradicts other findings in the Order (Attorney General Motion at 6-7). The Attorney General states that the Company's capital structure should reflect the most recent equity and debt ratios with its corresponding costs, and should use an updated capital structure (id. at 7).

In response, WMECo states that this issues was also fully analyzed and decided by the Department, and the Attorney General's motion for reconsideration on this issue is a result of disagreement with the decision (Company Response at 5). The Company states that the Attorney General has not met the standard for reconsideration (id. at 6).

The Attorney General is rearguing the position previously presented to the Department. This issue has been decided by the Department, and the motion for reconsideration has not introduced extraordinary circumstances or previously unknown facts. The Attorney General has not met the standard for reconsideration on this issue. Therefore, the motion for reconsideration is denied.

As part of the argument concerning the appropriate capital structure, the Attorney General raises the issue of the need to update the Company's carrying cost to account for the current capital structure. The Attorney General's proposal is based on the Department's findings in Commonwealth Electric Company, D.P.U./D.T.E. 97-111 (1998) where the Department directed the Companies to "modify their Plan and state explicitly that the carrying charge used for the transition charge calculation will be changed to reflect all changes to the capital structure and that the resulting benefits will be passed on to ratepayers."

While the motion for reconsideration on this issue is denied, the Department will clarify its Order regarding prospective changes in the Company's capital structure. The Company used the year-end 1995 capital structure in its December 31, 1997 restructuring filing. The Department did not require that the capital structure be updated during its review of the Company's petition. While the year-end 1995 capital structure was appropriate for review of the Company's restructuring filing, the Department will clarify its Order in D.T.E. 97-120, and require that the Company's restructuring plan include language similar to the Department's finding in D.T.E./D.P.U. 97-111. Therefore, the Company is directed to state explicitly that the carrying charge used for the transition charge calculation will be changed to reflect all changes to the capital structure and that the resulting benefits will be passed on to ratepayers. WMECo is directed to update its capital structure when the Company submits its reconciliation filings for review to the Department.

2. WMICG

WMICG requests reconsideration of the Department's decision with regard to the NUG&T Agreement (WMICG Motion at 4). WMICG states that since the close of hearings, WMECo has filed a proposal with the Federal Energy Regulatory Commission ("FERC") to amend the Northeast Utilities Generation and Transmission ("NUG&T") Agreement (id.).⁽³⁾ WMICG states the Company's FERC proposal treats wholesale power contracts in a manner inconsistent with ownership of facilities (id.). WMICG requests that the Department reconsider allocation of transition costs based on ownership shares (id.). WMICG states that although ownership shares of WMECo's facilities have been used in base rates, WMECo owned more generating assets than its capacity requirement, and so the fuel charge reflected credits provided by the NUG&T Agreement (id.) WMICG requests that, on reconsideration, the Department recognize this fact by excluding this portion from transition cost recovery (id.).

The Company contends that WMICG has not met the standard for reconsideration, and the Department should reject WMICG's request (Company Response at 11). The Company states that the Department was informed that WMECo planned to make a filing with the FERC to terminate the NUG&T Agreement (id.). The Company claims that its filing at the FERC is consistent with its request for transition cost recovery at the Department (id.). The Company contends that the FERC filing: (1) is not an extraordinary circumstance, (2) does not bring to light previously unknown or undisclosed facts, and (3) does not show that the Department's decision was the result of mistake or inadvertence (id. at 11-12).

In its Order, the Department decided the basis for allocation of transition costs with knowledge of the Company's intent to terminate the NUG&T Agreement, and WMICG's motion for reconsideration is an attempt to reargue this issue. WMICG has not brought to light any previously unknown or undisclosed facts that would have a significant impact on that decision. The motion for reconsideration on this issue is denied.

3. Houses of Worship

The Houses of Worship request that the Department reconsider and clarify: (1) the reopening of the church rate, and (2) the opening of the residential rate to houses of religious worship, and (3) the decision not to establish seasonal-based triple-tiered time-of-use rates (Houses of Worship Motion at 2). The Houses of Worship contend that the unavailability of the church rate or proposed time-of-use rates is unfair and unjust, and that the Department's decision is the result of mistake or inadvertence (id.).

In response, the Company states that the Department's Order correctly found that the Houses of Worship's proposals were either beyond the scope of the proceeding, or are inherently flawed (Company response at 14). The Company states that the Houses of Worship's request does not meet the Department's standard for reconsideration or clarification, and should be rejected (id.).

The issues raised by the Houses of Worship were fully decided in the Department's Order, and the motion for reconsideration is an attempt to reargue these issues.⁽⁴⁾ The Houses of Worship have not brought to light any previously unknown or undisclosed facts. While the Houses of Worship may disagree with the Department's determinations, such disagreement is not sufficient grounds for which the Department grants reconsideration. Therefore, the motion for reconsideration is denied.

In their motion, the Houses of Worship request that the Department justify various aspects of its decision. This is not the purpose of a motion for reconsideration or clarification. The Houses of Worship have not met the Department's standards of review for either a motion for reconsideration or clarification. Therefore, the motion is denied.

C. Motions for Clarification

1. The Attorney General

The Attorney General requests that the Department clarify its decision with regard to: (1) the NUG&T agreement, (2) lost revenues, and (3) unavoidable nuclear costs.

a. NUG&T Agreement

The Attorney General states that while the Department did find the Company's proposal to recover generation-related transition costs based on ownership shares consistent with the Restructuring Act,⁽⁵⁾ the Department did not indicate whether consideration of a method based on the NUG&T Agreement as reflected in the Company's fuel charge is inconsistent with the Restructuring Act, or is outside the scope of the Department's jurisdiction (Attorney General Motion at 3). The Attorney General contends that it is not clear whether the Department's approval of the Company's proposal was based on a conclusion that: (1) the Restructuring Act did not require that consideration be given to the effect of the NUG&T Agreement, or (2) the exclusivity of the FERC's jurisdiction over such cost allocation matters precluded such consideration (id.).

The Attorney General states that, in addition to the need to satisfy the parties' rights to an adequate explanation of the Department's decision, clarification is important because of the FERC's intention to constrain its review of responsibility for stranded costs among affiliates to only those cases in which state regulators conclude that they lack authority to address the issue (id.). The Attorney General states that the Department must clarify what it is telling the FERC about this issue (id.).

The Company contends that the Attorney General has failed to meet the standard of review for clarification of this issue (Company Response at 7). The Company states that the Department's decision on this issue was clear and unambiguous (id.). The Company adds that there is no reason to believe that the FERC will need any clarification (id.).

In its Order, the Department noted that WMECo's base rates had been established using ownership shares of Northeast Utilities' generating facilities. The Department found the

Company's proposal to recover its generation-related transition costs based on these ownership shares to be consistent with the Restructuring Act.⁽⁶⁾ The Attorney General requests clarification of whether generation-related transition cost recovery under the NUG&T Agreement as reflected in WMECo's fuel charge is inconsistent with the Restructuring Act or is outside the scope of the jurisdiction of the Department.

The choice of words on this issue in the Department's Order lacked precision. Therefore, the Department clarifies its Order. Of course, consideration of the NUG&T Agreement would have to be consistent with the Restructuring Act. But consistency with the Restructuring Act, though a necessary condition of approval, was not sufficient in and of itself. The Department also had to determine an appropriate basis for transition cost recovery.

While the Department found the Company's proposal to be consistent with the Restructuring Act, the Department also determined that ownership shares were the appropriate basis for recovery of the Company's transition costs. This should have been made explicit. In making this determination, the Department concluded that the fuel charge was inappropriate as the basis for determining WMECo's recovery of generation-related transition costs. The fuel charge captured the effects of WMECo's participation in NUG&T Agreement. Neither the NUG&T Agreement nor the fuel charge were used as the basis for recovery of WMECo's investments in generation-related assets or to determine the Company's revenue requirements. By contrast, WMECo's ownership shares were used as the basis to establish WMECo's base rates as well as recovery of the Company's investment in plant and equipment. Ownership shares defined WMECo's generation-related rate base, *i.e.*, the value of the generation-related assets recovered in rates by the Company. These asset values were recorded on the Company's books, depreciated on an annual basis, and used in calculating the Company's earnings. In the Company's restructuring plan, the book value of the Company's generation-related assets was based on WMECo's ownership shares. This is consistent with the Department's precedent for recovery of a company's investment in generation-related plant. See Western Massachusetts Electric Company, D.P.U. 84-25 (1984); Commonwealth Electric Company, D.P.U./D.T.E. 97-111 (1998). See also Commonwealth Electric Company, D.P.U./D.T.E. 98-78/83 (1998).⁽⁷⁾

In sum, the Department's decision on this matter considered the fundamental attributes of the two proposals including, but not limited to, consistency with the Restructuring Act. While consistency with the Restructuring Act was a prerequisite for consideration, the adequacy of the proposals could not be decided on that basis alone.⁽⁸⁾

b. Lost Revenues and Unavoidable Nuclear Costs

In its Order, the Department stated that lost revenue recovery would be allowed: (1) through the transition charge prior to divestiture, and (2) as a reduction to the residual value credit ("RVC") subsequent to divestiture. The Attorney General requests that the Department clarify that there is no double recovery of lost revenues (Attorney General Motion at 8). The Attorney General submits that the accrual of lost revenue should end

with divestiture and that the only sums to be considered as a reduction to the RVC would be amounts not recovered prior to divestiture (id.). The Company states that this issue has been clearly decided by the Department (Company response at 8). The Department will clarify its Order by expressly stating that the accrual of lost revenue ends with divestiture and the only sums to be considered as a reduction to the RVC will be amounts not recovered prior to divestiture.

With respect to the Company's recovery of unavoidable nuclear costs and the going-forward costs included in the nuclear performance-based ratemaking ("PBR") mechanism, the Attorney General requests that the Department clarify that there is no double recovery of the operating costs of the Millstone units 2 and 3 (Attorney General Motion at 9). The Company states that the Department's Order is clear, and that it would not seek double recovery of any such costs (Company response at 10). The Department allowed unavoidable nuclear costs to be included in the variable component of the transition charge. Because these costs are incurred regardless of operation, the Department separated these costs from the costs associated with operation of the Millstone units 2 and 3. Inclusion of these costs in the transition charge would be reviewed in the Company's reconciliation filing. The Department's Order on this issue is clear, and the motion for clarification on this issue is denied.

2. WMICG

WMICG requests clarification of the Department's decision regarding: (1) the Company's limitations on a customer's ability to resell electricity delivered by the Company, and (2) the distribution rates on March 1, 1998.

a. Resale of Electricity

WMICG states that the Department's Order was silent on the issue of the right of a customer to resell electricity delivered by the Company (WMICG Motion at 2). WMICG states that the Company's tariffs contain this prohibition (id.). The Company contends that the issue raised by WMICG's request is: (1) inchoate, (2) only peripherally connected to WMECo's restructuring proceeding, (3) and does not require determination by the Department in this Order (Company response at 12). This issue need not be clarified, for it was not addressed in the Department's Order. The issue went unaddressed because it was not within the scope of this proceeding.

b. Distribution COSS

WMICG requests that the Department clarify that the distribution rates in effect on March 1, 1998 will be reduced by the \$24.7 million increase the Company sought from the last distribution rate case, Western Massachusetts Electric Company, D.P.U. 91-290

(1992) (WMICG Motion at 2). The Company contends that WMICG's request is neither justified nor consistent with the Department's Order (Company response at 13).

The Department did not approve the proposed distribution rates in the Company's restructuring plan. WMICG has raised an issue regarding the distribution rates which have been in effect since the retail access date, March 1, 1998. The Department will clarify this issue. Because the rates from the Company's last distribution rate case were not functionalized for unbundling purposes, they are neither the appropriate unbundled distribution rates nor a relevant benchmark for unbundled rates in the Company's restructuring proceeding. Consistent with the functionalized rates approved by the Department in Commonwealth Electric Company, D.P.U./D.T.E. 97-111 (1998), the Department required the Company to perform an updated COSS using a more recent test year. There is no relevant benchmark for rates that are to be functionalized for unbundling purposes as a result of the Restructuring Act. Therefore, an updated COSS that is functionalized for unbundling purposes as a result of the Restructuring Act is not comparable to the rates from the Company's last rate case which determined a revenue requirement for an integrated electric company. There is no basis on which to conclude that the distribution rates in effect since March 1, 1998 represent an increase. In its review of the Company's Compliance Filing, the Department will review the COSS that has been functionalized for unbundling purposes as a result of the Restructuring Act.

III. ORDER

Accordingly, after due consideration, it is

ORDERED: That the Attorney General's motion for reconsideration is denied; and it is

FURTHER ORDERED: That the Attorney General's motion for clarification is allowed in part and denied in part; and it is

FURTHER ORDERED: That the WMICG's motion for reconsideration is denied; and it is

FURTHER ORDERED: That the WMICG's motion for clarification is allowed in part and denied in part; and it is

FURTHER ORDERED: That the Houses of Worship's motion for reconsideration is denied; and it is

FURTHER ORDERED: That the Houses of Worship's motion for clarification is denied;
and it is

FURTHER ORDERED: That Western Massachusetts Electric Company shall comply
with the directives of this Order.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

1. With each of the motions for reconsideration and/or clarification, the Department received motions for extension of the judicial appeal period. The motions for extension of the judicial appeal period were approved on October 21, 1999.
2. In addition, pursuant to the Department's Order in D.T.E. 97-120, on October 18, 1999, the Company submitted a compliance filing ("Compliance Filing") for the Department's review.
3. On June 9, 1999, Northeast Utilities filed an amendment to the NUG&T agreement. On June 29, 1999, the Department intervened in this proceeding. See, FERC Docket Number ER 99-3196-000.
4. In fact, the closing of the church rate was decided in another proceeding. See, Western Massachusetts Electric Company, D.P.U. 88-250 (1989).
5. St. 1997, c. 164.

6. The Department also noted that the Company would withdraw from the NUG&T Agreement upon divestiture of its non-nuclear generating facilities.

7. Commonwealth Electric Company and Cambridge Electric Light Company divestiture proceeding.

8. The Attorney General's concern that state regulators lack the authority to address stranded costs was not at issue in this proceeding; nor could it be. See Massachusetts Institute of Technology v. Department of Public Utilities, 425 Mass 856 (1997), upholding the Departments authority to determine stranded costs. See also, Massachusetts Institute of Technology, 74 F.E.R.C. 61,221 (1996).